

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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901 NORTH 5th STREET

KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

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|-------------------------------------|---|-----------------------------|
| HICKORY HILL FARMS, INC. |) | Docket No. CWA-07-2010-0159 |
| HOSPERS, IOWA |) | |
| |) | |
| Respondent |) | FINDING OF VIOLATION |
| |) | ORDER FOR COMPLIANCE |
| |) | |
| Proceedings under |) | |
| Sections 308(a) and 309(a)(3) |) | |
| of the Clean Water Act, |) | |
| 33 U.S.C. §§ 1318(a) and 1319(a)(3) |) | |
| |) | |

Preliminary Statement

- The following Findings of Violation are made and Order for Compliance (“Order”) issued pursuant to the authority of Section 308(a) and Section 309(a)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1318 and 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7, and redelegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.
- The Respondent Hickory Hill Farms, Inc. (“Respondent”) owns and/or operates an animal feeding operation located in the northwest ¼ of Section 12 of Township 95 North, Range 44 West, in Sioux County, Iowa. Respondent also operates Blom Feedlot, which is adjacent to the northeast corner of Hickory Hill Farms.

Statutory and Regulatory Authority

- Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
- Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of pollutant” to include “any addition of any pollutant to navigable waters from any point source.”
6. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. § 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.
7. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. 1362(6) to include, *inter alia*, biological materials and agricultural waste discharged to water.
8. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14) to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”
9. “Animal feeding operation” or “AFO” is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
10. “Concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO in accordance with 40 C.F.R. § 122.23(b)(4).
11. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4)(i) as an animal feeding operation that stables or confines as many as, or more than, “700 mature dairy cows, whether milked or dry.”
12. An owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained so that a discharge will occur. 40 C.F.R. § 122.23(d)(1).
13. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
14. The Iowa Department of Natural Resources (“IDNR”) is the agency within the state of Iowa authorized to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

15. Respondent owns and operates an animal feeding operation (“Facility”) that is located in the northwest ¼ of Section 12 of Township 95 North, Range 44 West, in Sioux County, Iowa. Respondent operates Blom Feedlot, which is adjacent to Hickory Hill Farm. Blom Feedlot consists of three open feedlots, which are used to feed Hickory Hill’s dry cattle. Blom Feedlot and Hickory Hill Farm are collectively referred to herein as the “Facility.”
16. The Facility confines and feeds or maintains dairy cows for a total of 45 days or more in any twelve-month period.
17. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility’s feeding areas.
18. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).
19. On April 27, 2010, EPA personnel inspected Respondent’s Facility to determine Respondent’s compliance with the CWA.
20. At the time of the April 27, 2010, inspection, the Facility was confining approximately 1,720 head of dairy cows.
21. The number of dairy cows confined and fed at the Facility is greater than 700, therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(4) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
22. At the time of the inspection, Respondent did not have a NPDES permit for the Facility. To date, Respondent has not applied for a NPDES permit.
23. Manure, litter, or process wastewater from Respondent’s facility flows into a ditch that flows to the southeast of the facility, which flows into an unnamed tributary of the Floyd River.
24. The Floyd River and its tributaries are waters of the United States, as defined by 40 C.F.R. § 122.2.
25. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to the Floyd River and its tributaries.
26. Based on the sampling data gathered by EPA during the April 27, 2010, inspection, manure, litter, or process wastewater containing pollutants from open feeding areas at the Facility will discharge into the Floyd River and its tributaries as a result of significant

precipitation events.

27. The intermittent flow of manure, litter, or process wastewater from Respondent's Facility to the Floyd River and its tributaries constitutes unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§1311 and 1342, and implementing regulations.
28. Respondent's failure to seek NPDES permit coverage for the Facility is a violation of 40 C.F.R. § 122.23(d)(1).

Order For Compliance

Based on the Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

29. Immediately upon receipt of this Order, Respondent shall cease all discharges of manure, litter, or process wastewater from the Facility to waters of the United States.
30. If manure, litter, or process wastewater cannot be managed at the Facility in a manner that prevents discharges to waters of the United States, then Respondent shall reduce the number of cattle confined at the Facility below regulatory thresholds within thirty (30) days of receipt of this Order. Respondent shall not repopulate cattle above regulatory thresholds at the Facility unless the Facility can be operated in a manner that prevents all discharges to waters of the United States.
31. If Respondent cannot immediately cease all discharges from the Facility to waters of the United States, regardless of whether the number of livestock is reduced below regulatory thresholds, then Respondent shall immediately remove and properly dispose of manure, litter, and process wastewater from areas that cannot be controlled in a manner to prevent discharges.
32. Unless Respondent permanently reduces the number of livestock confined at the Facility below regulatory thresholds, Respondent shall apply for an NPDES permit for the Facility within thirty (30) days of the effective date of this Order. Upon issuance of the NPDES Permit, Respondent shall comply with all terms contained therein, including terms related to the construction and operation of livestock waste controls.
33. Within thirty (30) days of the effective date of this Order, Respondent shall inform the EPA, in writing, of all actions taken to comply with the CWA and the terms of this Order.
34. If Respondent intends to construct adequate runoff control structures to allow the

confinement of cattle above regulatory thresholds, then beginning thirty (30) days after receipt of this Order and continuing monthly on the seventh day of each month until Respondent submits a Notice of Construction Completion to EPA, Respondent shall submit written monthly progress reports to EPA. The monthly reports shall describe, in detail, the construction and related activities that occurred at the Facility during the reporting period, construction and related activities anticipated during the upcoming reporting period, and a description of any problems encountered or anticipated and how these problems were/will be addressed.

35. Upon completion of the runoff control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to EPA within thirty (30) days of completion of construction. The notification shall be in writing and shall include as-built drawings of the constructed improvements.

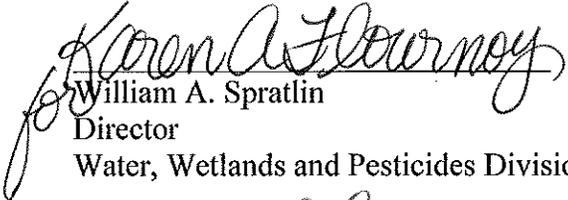
Effect of Order

36. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.
37. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
38. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect Respondent's Facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.
39. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.
40. If any provision or authority of this Order or the application of this Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
41. All submissions to EPA required by this Order shall be sent to:

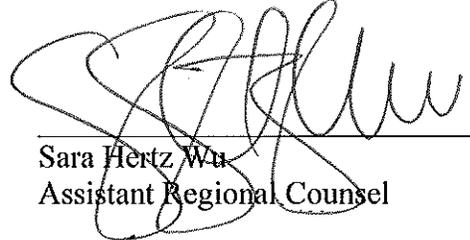
Delia Garcia
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

42. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations. Special rules governing information obtained under the CWA appear in 40 C.F.R. § 2.302.
43. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to (1) civil penalties of up to \$37,500 per day for each violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).
44. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

9-14-10
Date



William A. Spratlin
Director
Water, Wetlands and Pesticides Division



Sara Hertz Wu
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

I further certify that I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance together with cover letter and small business assistance information, to the following:

Mr. Scott Meissner
President
Hickory Hill Farms, Inc.
4045 400th Street
Hospers, Iowa 51238.

I further certify that on the date noted below, I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to the following representative of the State of Iowa:

Ken Hessenius
Iowa Department of Natural Resources
Gateway North, Suite E17
Spencer, Iowa 51301.

Kimberly

SEP 15 2010

Date